

**Farina Corporation and Sheet Metal Workers  
International Association, AFL-CIO, Local  
Union No. 17.** Cases 1-CA-27051 and 1-CA-  
27207

July 23, 1993

ORDER DENYING MOTION

BY CHAIRMAN STEPHENS AND MEMBERS  
DEVANEY AND RAUDABAUGH

On January 29, 1993, the National Labor Relations Board issued a Decision and Order in this proceeding.<sup>1</sup> On February 16, 1993, the Respondent filed a Motion to Reopen the Record and for Reconsideration of Board Order. In support of its motion, the Respondent contends, inter alia, that the Board should reconsider its remedy and toll backpay as of the date the Respondent offered to bargain over the layoffs at issue, that the record should be reopened to receive evidence available only since the close of hearing concerning layoffs subsequent to the hearing, and that the judge's order should be amended to conform to his conclu-

<sup>1</sup> 310 NLRB 318.

sions of law. Subsequently, the General Counsel filed an opposition to the Respondent's motion.

The Board having duly considered the matter,

IT IS ORDERED that the Respondent's Motion to Reopen and for Reconsideration is denied as lacking in merit.<sup>2</sup>

<sup>2</sup> The Board notes that in *Porta-King Building Systems*, 310 NLRB 539 (1993), it rejected an argument similar to that made by the Respondent here that an offer to bargain about layoffs after they had occurred was sufficient to toll backpay liability. Moreover, in *Porta-King*, the Board gave a similar reinstatement and make-whole remedy for the unilateral layoffs. We note, however, that our order is without prejudice to the Respondent's opportunity, in compliance, to show that, as a result of external factors, the Respondent had no work for the laid-off employees to perform, i.e., such work was not being performed either by other employees of the Respondent or by employees under a subcontracting arrangement with the Respondent. Backpay would be tolled as of the date that the Respondent could show that all such work had disappeared, and that therefore it was impossible to restore the status quo ante by reinstating the employees to their same or substantially equivalent positions prior to bargaining.

Member Raudabaugh did not participate in the original decision in this case, and he does not necessarily agree with its rationale for finding a violation. However, he does agree that the instant motion, confined to remedial matters, should be denied.